Affirmed - 13, 33 -
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Jno Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~445.~~ 229

THOMAS CLYDE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 23, 1870.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 445.

THOMAS CLYDE, APPELLANT,

VS.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims. December term, 1868.

THOMAS CLYDE
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, Thomas Clyde, a citizen and resident of Philadelphia, Pennsylvania, respectfully represents—

That he was, on the 26th day of October, A. D. 1863, the owner of the steamer called "Rebecca Clyde;" that, on said day said vessel entered into the service of the United States, in compliance with the terms of a certain charter-party of said date, executed by your petitioner for himself, and by Captain A. Boyd, A. Q. M. U. S. A., for the United States, a copy of which said charter-party is hereto attached, marked "A," and made part hereof; that, by the terms of said charter-party, the United States agreed to pay your petitioner for each and every day said vessel might be retained in said service the sum of three hundred dollars; that said vessel continued in said service under said charter-party, faithfully performing all the requirements thereof, from the date of said charter until the 23d day of February, A. D. 1864, when said vessel was finally discharged from said service.

Your petitioner further avers that the services of said vessel were well and reasonably worth the amount agreed to be paid therefor by the United States; but he says that, instead of paying your petitioner according to the terms of said charter-party, and as justice and
2 equity would dictate, the said United States, through an order of the Quartermaster General, issued sometime about the 31st day of December, A. D. 1863, arbitrarily and to the wrong of your petitioner, and against his consent, directed that the said vessel should receive but two hundred dollars per day for said services thereafter; that said charter was then and continued in full force until said discharge, and that no reduction in said compensation ought to have been made; but your petitioner says that, notwithstanding his earnest protests, the said vessel received, after said reduction, only the sum of two hundred dollars per day, which he was compelled to receive, or receive nothing; and that, in consequence of said reduction, there was wrongfully withheld from him, on final payment, the sum of about seven thousand dollars, and for this amount he asks judgment.

Second count. And for other and further cause of action, your petitioner alleges that, on or about the 5th day of March, A. D. 1863, he was the owner of the steam-vessel "Emilie;" that, on said day the United States received said vessel into their service, under a regularly-executed charter-party, made on the part of petitioner, by his agent, C. D. Ashcroft, and on the part of the United States by Colonel H. O. Biggs, Q. M. U. S. A., a copy of which said charter is hereto attached, marked "B," and made part hereof; that, by the terms of said charter, the United States agreed to pay your petitioner the sum of three hundred and fifty dollars for each and every day said vessel was retained in said service; that said vessel remained in said service, faithfully discharging all the obligations of said charter, until some time about the 13th day of August, A. D. 1863, when a new charter-party was executed; that, on or about the 3d day of July, A. D. 1863, the Quartermaster General, arbitrarily and to the wrong and against the earnest protest of your petitioner made through his agent, reduced the rate of compensation from three hundred and fifty dollars per day, as provided

by said charter-party, to two hundred dollars per day, and directed that said order of reduction should take effect May 5, A. D. 1863; and from said last date until said vessel was discharged from service under said charter-party, your petitioner was only paid for seventy-five days
3 said last-named sum per day; and that, in consequence of said reduction, the United States wrongfully withheld from your petitioner about the sum of twelve thousand dollars; the exact amount your petitioner is unable to state, as the final accounts of said service and payment are in the Quartermaster General's Department. Your petitioner therefore prays judgment for the sum of twelve thousand dollars.

Your petitioner further says that he has made application for the claim herein set forth at the proper Department, but without success; and that he has at all times borne true allegiance to Government of the United States, and has never voluntarily, or otherwise, given aid or encouragement to rebellion against said Government; he therefore asks judgment for the several amounts herein-above claimed, amounting in the aggregate to the sum of nineteen thousand dollars.

CHIPMAN, HOSMER, & CO.,
Attorneys of Petitioner.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Thomas Clyde, being duly sworn, on his oath deposes and says that he is the claimant in the foregoing petition; that no assignment of the claim therein stated has been made, except as in said petition shown; that he is justly entitled to the amount therein claimed, after allowing all just offsets and credits; and that the matters and things in said petition are true, as he believes.

THOMAS CLYDE.

Subscribed and sworn to before me this 10th day of December, A. D. 1868.

[L. S.] E. H. BAILEY,
Notary Public.

4 EXHIBIT "A."

This charter-party of affreightment, made this twenty-sixth day of October, in the year one thousand eight hundred and sixty-three, between Thomas Clyde, owner of the steamer or vessel called the "Rebecca Clyde," of Philadelphia, of the burthen of 446 50-95 registered tons, or thereabouts, at present lying in the harbor of Philadelphia, and commanded by , of the first part, and Captain A. Boyd, assistant quartermaster, United States Army, for the United States, of the second part, witnesseth: That the said party of the first part does and doth hereby grant and to freight let, and the said party of the second part does and doth hereby to freight take, the said steamer , to load at Philadelphia or elsewhere, and proceed on the voyage hereinafter mentioned. (Always reserving sufficient room for the stowage of the vessel's cables and materials, and accommodation of the officers and crew, and, if a steam vessel, for necessary supply of coal.) And thereupon the party of the first part, and his heirs, executors, administrators, and assigns, doth hereby covenant, grant, and agree, to and with the said party of the second part, that the said vessel now is, and shall be, kept and maintained, during the whole of the voyage mentioned in

this contract, tight, staunch, strong, and well and sufficiently manned, victualled, tackled, apparalled and ballasted, and furnished in every respect fit for merchants' service, at the cost and charge of her owners. (The time lost in consequence of any deficiency in these respects not to be paid for by the United States.) And shall, on the 26th day of October, 1863, be ready to receive on board, whenever tendered alongside by the Quartermaster United States Army, his factors or assigns, such troops, men, animals, and supplies, or cargo, as they shall order and direct, and the said vessel can conveniently stow and carry; and when laden shall proceed, with the first good opportunity, and without delay, from the port of Philadelphia, or elsewhere, and proceed direct to such ports and places as ordered by the quartermaster United States Army, and deliver cargo to the quartermaster, or duly authorized agent of the quartermaster's department. All pilotage and port charges will be paid by the United States after leaving the port of Philadelphia. All cargo to be received and delivered within reach of the said vessel's tackles. The said vessel shall deliver her cargo in good order and condition, (the dangers of the seas, fire, and navigation, and the restraints of princes and rulers, being always excepted.) The war risk to be borne by the United States; the marine risk to be borne by the owners.

In consideration whereof, the said party of the second part does agree to employ the said vessel on the voyage or voyages aforesaid: and that, as a freight or hire of the said vessel during the term of this contract, he will pay, or cause to be paid, the full and just sum of three hundred dollars per day for each and every day said vessel may be employed, and will furnish all fuel necessary for the navigation of the said vessel, if a steamer, until the said vessel is returned to the said party of the first part in Philadelphia, in the same order as when received, ordinary wear and tear, damage by the elements, collision at sea and in port, bursting of boilers, and breakage of machinery excepted; to become due, owing, and payable in the manner and form following, that is to say: payable to the order of Thomas Clyde, at the Quartermaster's Office of the United States, at Philadelphia, monthly, upon presenting certificates of the duly authorized agent of the Quartermaster's Department that the said vessel has faithfully performed her part of this contract.

The said vessel is valued and appraised at the sum of seventy-five thousand dollars, and should she be retained so long in the service of the United States that the money paid and due on account of said charter (deducting therefrom the actual cost of running and keeping in repair the said vessel during the said time, together with a net profit of thirty-three per cent. per annum on said appraised value) shall be equal to said appraised value, then the said vessel shall become the property of the United States without further payment, except such sum as may then be due on account of the services of the said vessel, rendered under the said charter.

And, further, if at any time during the continuance of this charter the United States shall elect to purchase the said vessel, then they shall have the right to take her at the appraised value at the date of charter, and all money then already paid and due on account of said charter (deducting therefrom the actual cost of running and keeping in repair the said vessel during the said time, together with a net profit of thirty-three per cent. per annum on the original appraised value) shall apply on account of the said purchase.

This charter shall go into effect at six o'clock a. m., of the 26th October, 1863, and shall continue in force as long as said vessel may be required by the United States War Department.

This charter-party to be subject to revision by the Quartermaster General, if deemed necessary by him.

No member of Congress shall be admitted to any share or part of this contract, or any benefit to arise therefrom.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and affixed their seals, on the 4th day of November, 1863.

(Executed in quintuplicate.)

THO'S CLYDE. [L. S.]
A. BOYD, [L. S.]
Capt. & A. Q. M.

Signed, sealed, and delivered in the presence of—
CYRUS BOWMAN,
GEO. A. BEACH.

Exhibit "B."

This charter-party of affreightment, made and concluded on this fifth day of March, in the year one thousand eight hundred and sixty-three, (1863,) between Charles D. Ashcroft, master of and agent for the owners of the steamer or vessel called the "Emilie," of Philadelphia, of the burthen of 458 76-95 tons, or thereabouts, at present lying at Philadelphia, and commanded by Charles D. Ashcroft, of the one part, and Herman Biggs, lieutenant colonel and quartermaster United States War Department, of the other part, witnesseth: "That the said Charles D. Ashcroft, master, agent, &c., does and doth hereby grant and to freight let. and the said Herman Biggs, lieutenant colonel and quartermaster aforesaid, does and doth hereby grant and to freight take, the said steamer or vessel called the "Emilie," to load at Philadelphia, and proceed on the voyage as hereinafter mentioned. (Always reserving sufficient room for the stowage of the vessel's cables and materials, and accommodation of the officers and crew.) And thereupon Charles D. Ashcroft, master of, &c., doth hereby covenant, grant, and agree, to and with the said Herman Biggs, lieutenant colonel and quartermaster, &c., of the United States War Department, that the said steamer "Emilie" now is and shall be kept and maintained during the whole of the time mentioned in this contract, tight, staunch, and strong, and well and sufficiently manned, victualled, tackled, and apparelled, and furnished in every respect fit for the merchants' service, except fuel, at the cost and charge of her owners; and shall, this day of the date hereof, be ready to receive on board, whenever then tendered alongside by the Quartermaster United States Army, such goods as they shall order and direct, and said vessel can conveniently stow and carry; and when laden shall sail, with the first good opportunity, from the port of
Philadelphia, and proceed direct to such as ordered by the Quar-
6 termaster United States Army, and deliver cargo to the Quartermaster, or duly authorized agent of the War Department, (the dangers of the seas excepted.) All port charges will be paid by the War Department. All cargo to be received and delivered within reach of said vessel's tackles.

In consideration whereof the said Herman Biggs, lieutenant colonel and quartermaster of the United States War Department, hereby binds and obligates the United States War Department to employ the said vessel for the term of one month or longer; and that, as a freight or hire of the said vessel during the term of this contract, they will pay,

or cause to be paid, the full and just sum of three hundred and fifty ($350) dollars per day for each and every day said steamer is employed, and to furnish all fuel from the above date, until the said steamer is returned to the said Charles D. Ashcroft, master, agent, &c., at the port of Philadelphia, in the same order as when received, common wear and tear excepted, (the above steamer not to be used as a gunboat,) to become due, owing, and payable in the manner and form following, that is to say, payable to the order of Charles D. Ashcroft, master, agent, &c., or his attorney, at Philadelphia, Penn., upon presenting certificates signed by the duly authorized agents of the War Department that said vessel has performed her part of this contract. United States War Department takes the war risk.

The above steamer is valued at sixty-five thousand dollars ($65,000.)

In witness whereof the said parties to these have hereunto interchangeably set their hands and affixed their seals, on the 5th day of March, 1863.

CHA'S D. ASHCROFT, [L. S.]
Master of, and Agent, &c.
HERMAN BIGGS, [L. S.]
Lt Col. and Q. M., U. S. A.

Signed, sealed, and delivered in the presence of us—
JOHN SHELD,
H. E. GOODWIN.

7 In the United States Court of Claims. December term, A. D. 1868.

THOMAS CLYDE
vs.
THE UNITED STATES. } No. 3710.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein, and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of nineteen thousand dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

8 In the Court of Claims.

THOMAS CLYDE
vs.
THE UNITED STATES. } 3710.

And now, to wit, 14th of February, A. D. 1870, the court, upon due

consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant's petition be dismissed.

By the court:

A true copy of record.

9 In the Court of Claims.

THOMAS CLYDE
vs.
THE UNITED STATES. } 3710.

To the honorable the Court of Claims:

Comes now the claimant in the above-entitled cause, and, by his attorneys, moves the court for the allowance of an appeal to the Supreme Court of the United States, from the judgment of the Court of Claims rendered February 14th, 1870, dismissing the petition in said cause.

CHIPMAN, HOSMER & CO,
THO'S J. DURANT.
CHA'S F. PECK,
Att'ys for Claimant.

Filed in clerk's office May 2, 1870.

Ordered that the appeal as prayed in the case of Thomas Clyde (No. 3710) be allowed.

By the court.

MAY 2, 1870.

10 THOMAS CLYDE
vs.
THE UNITED STATES. } 2nd case. No. 3710.

The findings of fact and the conclusions of law on said facts on which the court founded its judgment.

And the court find the facts to be—

First, as to the "Rebecca Clyde."

1st. The defendants chartered from the petitioner the steamboat Rebecca Clyde for military service, on the 26th day of October, 1863, at $300 per day. A charter-party was duly executed by the defendants, copy of which is attached to the plaintiff's petition, marked "A," and made part of these findings. She remained in service of defendants, performing all the stipulations of the charter, until February 23rd, 1864, when she was discharged from service by the defendants.

10½ 2nd. On the 19th of December, 1863, the Quartermaster General issued a written order directing Captain Boyd, the assistant quartermaster at Philadelphia, in whose service the steamer then was, that if she should be retained in service the rate of the vessel must be "reduced from the 20th of December, 1863," and the order contained no further instructions. Being notified of this order, the claimant on the 23rd of December, 1863, in writing, offered to the defendants, through the said assistant quartermaster, that if the Government would keep the said vessel in service for four months, or until the port of Richmond should be opened, he would reduce the rate of her compensation to $200 per day from the 20th of December, 1863. The defend-

ant's agents never responded to this offer—neither by accepting nor by rejecting it, and the vessel continued in the defendants' service without interruption.

11 3rd. The said assistant quartermaster notified the Quartermaster General of the defendants' offer, but the Quartermaster General made no response nor issued any instructions relative thereto. The vessel continued in service, receiving the ordinary certificates of service from the defendants' officers, in which no rate was expressed. She was discharged from the service at the request of the claimant, on the 23rd day of February, 1864. On the 13th of April, 1864, an account was made out and stated between the parties, by the defendants' officers, in the following form:

"No. 78, "B." March, 1864.

"*The United States to Thomas Clyde, Dr.*

"Nov. 25, 1863, to "Jan. 2, 1864.	"For services of steamer "Rebecca Clyde," as per charter, dated October 26th, 1863, from November 25th, 1863, to 12 m., January 2, 1864, as per certificate and sailing-order annexed:	
12	"25 days *a* $300 per day, old rate.....	$7,500 00
	"13½ days *a* $200 per day, new rate.....	2,700 00
		$10,200 00

And at the foot of such account the claimant gave a receipt in full in the following form:

"Received at Philadelphia the 11th of March, 1864, of Capt. A. Boyd, assistant quartermaster United States Army, the sum of ten thousand two hundred dollars, in full of the above account.

"THOMAS CLYDE."

The defendants have paid to the claimant the amount stated in such account at $200 per day, but have never paid the balance of $100 per day sought to be recovered.

And the Court of Claims, as a conclusion of law upon the foregoing findings of fact, decides that the defendants should recover, and the petition of the claimant be dismissed.

13 Second, as to the steamer "Emilie:"

1st. The defendants chartered from the petitioner by a duly executed charter-party of date March 5th, 1863, a copy of which is annexed to plaintiff's petition marked "B," and is made a part of these findings, at the rate of $350 per day. The said steamer Emelie remained in defendants' service, performing all the stipulations of the charter, until July 19th, 1863, when she was discharged by the defendants.

2nd. On the 9th of April, 1863, the Quartermaster General issued an order to Colonel Biggs, the assistant quartermaster at Newbern, under whom the steamer was then in service, directing that her charter-rate be reduced forthwith to $175 a day. On the 22nd Colonel Biggs, in writing, officially notified the master of the vessel of the Quartermaster General's order, and that if the charter-rate was not reduced

14 accordingly, the steamer would be discharged from the service of the defendants. The master, on the same day, in writing, refused to

allow the vessel to remain in the service at the rate ordered by the Quartermaster General, but at the same time proposed to Colonel Biggs, and offered to agree "That, on and after the 5th of May, 1863, the charter shall be $300 per day, provided the Government agree to keep her in service for the term of not less than four months."

On the 24th of April, 1863, Major General Foster, commanding the 18th Army Corps in the military service of which the Emilie was employed, decided that her retention in the military service was a military necessity, and he ordered that she should not be discharged.

Shortly before the 22nd of June, 1863, the Quartermaster General issued a further order to the assistant quartermaster in charge,
15 Captain R. C. Webster, directing that the rate of the Emilie's charter be reduced to $175 per day from the 9th of April then past, or that she be discharged from the defendant's service.

Written notice of this order was given by Captain Webster to the master of the Emilie on the 22nd of June, 1863. The master thereupon replied, in writing, insisting that the steamer had remained in service upon the terms of his previous offer, to wit, at the original charter-rate of $350 a day till the 5th of May, and from that time at $300 a day; and he refused to accept the terms ordered by the Quartermaster General, and demanded that a discharge from the service be forthwith given to his vessel. But the commading general thereupon again decided that the retention of the vessel was a military necessity, and he
16 ordered that she be retained in the defendants' military service.

On the 15th of July, 1863, the commanding general allowed the vessel to leave his department, and on the 19th of July, 1863, she was finally discharged from service at Philadelphia.

The defendants subsequently paid the claimant the charter-rate of the steamer, $350 a day, up to and including the 5th of May, 1863, and on the 31st of December, 1863, an account was stated by the defendants' officers as between the parties, allowing to the claimant for the use of this vessel the sum of $300 a day after the 5th of May until the time of her discharge, which account was in form, as follows:

No. 322, "B," December, 1863.

The United States to Charles D. Ashcroft, Dr.

1863.		
May 5th to July 19th.	For services of steamer "Emilie," as per charter, dated March 5th, 1863, from May 5th, to 3 p. m., July 19th, 1863, as per certificates hereto annexed, being 75 15-24	
17	days *a* $300 per day.....	$22,687 50
	Also, one day, April 5th, 1863, as per certificate hereto annexed.....	350 00
		$23,037 50
	Deduct for May 5th, paid on last certificate.	350 00
		$22,687 50

And at the foot of this account the claimant, by his duly authorized agent, the master of the vessel, executed a receipt in full, which receipt was in form, as follows:

"Received at Philadelphia, the 31st of December, 1863, of Captain

A. Boyd, assistant quartermaster United States Army, the sum of $22,687 50, in full of the above account.

"CHA'S D. ASHCROFT."

And the defendants thereupon paid, and the claimant received, the balance of $22,687 50, as stated to be due.

That the claimant has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

18 And the Court of Claims, as a conclusion of law upon the foregoing findings of fact, decides that the defendants should recover, and the petition of the claimant be dismissed.

19 In the Court of Claims.

THOMAS CLYDE
vs.
THE UNITED STATES. } No. 3710.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office, May 2, 1879, and of the order of the court 2d May, 1870, allowing the same; of the findings of fact, and the conclusions of law on said facts, on which the court founded its judgment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 22d day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 445. Thomas Clyde, appellant, vs. The United States. Court of Claims. Filed 23d December, 1870.

In the Supreme Court of the United States.

DECEMBER TERM. 1871.

THOMAS CLYDE, APPELLANT,

vs.

THE UNITED STATES.

No. 229.

APPEAL FROM THE COURT OF CLAIMS.

The petition filed in the Court of Claims, sets out two distinct causes of action; one arising out of the charter by the Government, of the petitioner's steamer "the Rebecca Clyde," the other, from the charter of the steamer "Emilie." We will examine each of the cases separately.

THE CASE OF THE REBECCA CLYDE.

Abstract.

In this case the petitioner avers an indebtedness to him by the United States of $7.000. Record, p. 1.

The facts are, that the United States hired from petitioner by a contract in writing, to be found at pp. 2, 3, and 4 of the Record, his steamer the Rebecca Clyde, from 26th October, 1863, at $300 a day, and continued in service until 23d February, 1864, when she was discharged.

See Record, p. 6, first finding.

That on the 19th December, 1863, the Quartermaster General directed Boyd, assistant quatermaster, in whose service the vessel then was, that if retained in service, the

rate of pay must be reduced from the 20th December, 1863, without saying how much. When apprised of this order the petitioner offered in writing to reduce the rate to $200 a day, provided the United States would retain the vessel in service four months, or until the port of Richmond should be opened. See Record p. 6, finding second.

The United States officers made no reply whatever to this written proposal, the vessel remaining all the while in service. See Record, p. 7, top.

The Quartermaster General was notified by Boyd, the assistant quartermaster, of petitioner's offer, but took no notice of it giving no instructions on the subject. See Record, p. 7, finding third.

On the 23d of February, 1864, the vessel was discharged from the service at the request of the petitioner. See finding third, Record, p. 7.

On the 13th April, 1864, the Quartermaster General made out an account for the services of the "Rebecca Clyde" for 38½ days from November 25, 1863, to January 2, 1864, allowing twenty-five of these days at the charter rate of $300 a day, and reducing the other 13½ days to two hundred dollars a day, thus curtailing $1,350, paying $10,200, instead of $11,550; the petitioner received the amount and gave a receipt for it in the usual form. See Record, p. 7, finding 3.

There was also another payment made to the petitioners for the services of the "Rebecca Clyde" from January 2, 1864, the end of the account described above, and the 23d February, when the boat went out of service.

The Quartermaster General made out the account in the following form:

"No. 128 B, April, 1864.

THE UNITED STATES,

To THOMAS CLYDE, *Dr.*

January 2, 1864, to February 23, 1864.

For services of steamer "Rebecca Clyde," as per charter dated October 26, 1863, from 12 m. January 2, to 12 m. February 23, 1864, as per certificate hereunto annexed.

Fifty-two days at $200 00 per day.....$10,400

I certify the above steamer was borne on my report of persons and articles hired for the months of January and February, 1864.

A. BOYD,
Capt. and A. Q. M.

Received at Philadelphia, the 13th April, 1864, of Captain A. Boyd, assistant quartermaster, United States army, the sum of ten thousand four hundred dollars in full of the above account.

THOMAS CLYDE."

This voucher and fact was accidentally omitted by the Court of Claims in the statement of facts returned to this court, but will be admitted by the United States as if it formed part of the record.

Here we have $5,200 short paid on the charter rate, which added to the $1,350 short paid on the first voucher, makes the whole amount $6,550, which it is claimed has been short paid for the services of the Rebecca Clyde, and which is still due by the United States to the petitioner.

Points.

First. There was in this case no acquiescence on the part of the petitioner in the purpose of the Quartermaster General to reduce the rate of the "Rebecca Clyde;" and the case differs in this from the case of Clyde *vs.* The United States, for the services of the "Tallacca," Nos. 43 and 44, decided at this term, not yet reported. In the Tallaca case, when Clyde was informed of the Quartermaster General's

determination to reduce the rate of pay for his service, though "he refused to consent to the reduction," he did not show to the court, "whether on being notified of the order, he determined to allow his boat to remain in the service, or sought to take her out;" in this case on the contrary, he not only declined to agree to the reduction, but stated new terms on which he would consent to let the boat remain, which not being accepted by the Quartermaster General, after a reasonable delay, he, Clyde, took his boat out of the service.

Second. Under such circumstances, the receipt of Clyde for the balance of $10,200 cannot be deemed such a settlement of his claim as precludes him from demanding the remainder, for there was, properly speaking, no dispute about the price. The price was to be reduced if the vessel was retained, but such an expression cannot be made to embrace the time the owner supposed the Quartermaster General was deliberating on his, Clyde's, proposal.

We now take the second count of the petition, for the services of the "Emilie."

Facts.

The United States chartered the Emilie from her owner, the petitioner, on the 5th March, 1863, at the rate of $350 a day, and she remained in service until 19th July, 1863. See charter-party, Rec., pp. 4 and 5, Finding 1, p. 7,

The Quartermaster ordered her rate to be reduced to $175, and this order was officially notified to the master of the Emilie on the 22d April, 1863, by Colonel Biggs, stating that if the reduction was not assented to the vessel would be discharged from service. The master of the steamer refused to allow the vessel to remain in service; but General Foster, commanding the department, declared her retention to be a military necessity, and she was not discharged. See Rec. p. 7 foot, and 8 top.

About, or a little before, 22d June, 1863, the Quartermaster General again ordered the rate of the Emilie to be reduced to $175 or she be discharged. The master again refused and again demanded the discharge of his vessel, and she was a second time retained as a matter of military necessity by order of the commanding general, and she was so retained until 19th July, 1863, when she was discharged. See Rec., p. 8, *middle*.

Clyde was paid charter rate of $350 a day up to 5th May, 1863. See Rec., p. 8.

But from May 5th to time of discharge only $300 a day, that is $50 a day less than he should have received; and the number of days being seventy-five 15-24, he is now entitled to $3,782 25.

Points.

First. This case of the Emilie is still further beyond the limits of the Clyde cases No. 43 and 44 of this term, than that of the Rebecca Clyde, discussed in the fore part of this brief.

The demand for the boat was made immediately upon the threat of reduction of price, and she remained in service after that as a military necessity, and against the will of the petitioner.

Second. In this case there was no dispute as to price and settlement, the property of the petitioner was detained against his will, after he had demanded its restoration, hence he is entitled to all his contract called for, which is $350 a day, and not $300.

Respectfully submitted.

CHIPMAN & HOSMER,

THOS. J. DURANT.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THOMAS CLYDE, *Appellant*,
vs.
THE UNITED STATES. } No. 229.

STATEMENT AND BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THOMAS CLYDE, *Appellant*,
vs.
THE UNITED STATES. } No. 229.

STATEMENT AND BRIEF FOR THE UNITED STATES.

The petitioner seeks to recover an amount alleged to be remaining due under charter parties of two steamboats chartered by the Government, the first at the rate of three hundred dollars a day, and the second at the rate of three hundred and fifty dollars a day.

While they were in the employment of the Government, the Quartermaster General issued orders reducing the rate for the first vessel to two hundred dollars per day, and for the second vessel to one hundred and seventy-five dollars per day. After each vessel had ceased to be in the service of the Government, an account was stated between the United States and the appellant in the following form:

"THE UNITED STATES *to* THOMAS CLYDE, *Dr.*

"November 25. 1863, to January 2, 1864.—For services of steamer 'Rebecca Clyde,' as per charter, dated October 26, 1863, from November 25, 1863, to 12 M. January 2, 1864, as per certificate and sailing order annexed:

"25 days, at $300 per day, old rate.....	$7, 500 00
"13½ days, at $200 per day, new rate.....	2, 700 00
	10, 200 00"

And at the foot of such account the claimant gave a receipt in full, in the following form:

"Received, at Philadelphia, the 11th of March, 1864, of Captain A. Boyd, assistant quartermaster, United States Army, the sum of ten thousand two hundred dollars, in full of the above account.

"THOMAS CLYDE."

"THE UNITED STATES *to* CHARLES D. ASHCROFT, *Dr.*

"1863. May 5 to July 19.—For services of steamer 'Emilie,' as per charter, dated March 5, 1863, from May 5 to 3 P. M. July 19, 1863, as per certificates hereto annexed, being $75\frac{15}{24}$ days, at $300 per day	$22,687	50
"Also, one day, April 5, 1863, as per certificate hereto annexed	350	50
	23,037	50
"Deduct for May 5, paid on last certificate.	350	00
	22,687	50"

And at the foot of this account the claimant, by his duly authorized agent, the master of the vessel, executed a receipt in full, which receipt was in form as follows:

"Received, at Philadelphia, the 31st of December, 1863, of Captain A. Boyd, assistant quartermaster, United States Army, the sum of $22,687 50, in full of the above account.

"CHAS. D. ASHCROFT."

The Government paid at the time these receipts were given the amount due according to the accounts then stated.

The facts in this case would seem to bring it within the United States *vs.* Clyde, in 13 Wallace. From the

time that the Quartermaster General ordered that the sum to be paid under these charter parties should be reduced, the claim must be considered as contested by the United States, and the subsequent receipt in full given by the appellant, accompanied by the acceptance of the amount declared to be due, according to the accounts to which the receipts were annexed, was a final settlement of the claim, which bars his action.

See, also, United States *vs.* Child, (12 Wallace, 232.)

C. H. HILL,

Assistant Attorney General.